IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 30459 of 2005(A)

OS.36/1996 of PRL.MUNSIFF COURT, CHERTHALA
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PETITIONER:

MATHEW JOSE, OOPUPURATHU VEETTIL,
PALLILPPURAM VILLAGE, DO. MURI.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT:

ANTONY, KULANGARAPARAMBIL,
PALLIKUNNU KARAYIL,
KUTTANADU TALUK.

BY ADV. SRI.THOMAS JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE AGREEMENT DT.17.7.95.

EXT.P2 : TRUE COPY OF THE JUDGMENT DT.25.8.05 IN RFA NO.2/04 BEFORE THIS HON'BLE COURT.

EXT.P3 : TRUE COPY OF THE PEITTION FOR COMPROMISE DT.30.7.05 BEFORE THE MUNSIFF'S COURT, CHERTHALA.

EXT.P4 : TRUE COPY OF THE APPLICATION DT.25.8.05 IN IA.888/05 BEFORE THE MUNSIFF COURT, CHERTHALA.

EXT.P5 : TRUE COPY OF THE ORDER DT.7.10.05 IN IA NO.888/05 IN OS NO.36/96 BEFORE THE MUNSIFF COURT, CHERTHALA.

EXT.P6 : TRUE COPY OF THE RECEIPT DT.30.7.05.

EXT.P7 : TRUE COPY OF THE APPLICATION IN IA 899/05 DT.9.9.05 BEFORE THE MUNSIFF COURT, CHERTHALA.

EXT.P8 : TRUE COPY OF THE ORDER DT.7.10.05 PASSED BY THE MUNSIFF COURT, CHERTHALA IN OS NO.36 OF 1996.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30459 OF 2005

Dated this the 1st day of June, 2007

JUDGMENT

The 5th defendant in the suit for specific performance of a contract for sale challenges Exts.P5 and P8 orders passed by the learned Subordinate judge in this proceeding under Article 227 of the Constition initiated by the 5th defendant in the suit for specific performance of a contract for sale. The suit was filed by the respondent herein arraying the petitioner and other close relations. The suit was rejected by the trial court for non-remittance of balance court fee. An appeal was preferred before this Court during the pendency of the appeal. The issue was settled between the parties and this Court dismissed the suit noticing a memo filed by the counsel for the appellant(respondent herein). After Ext.P2 the petitioner filed two applications successively for return of the documents pertaining to properties in question which had been produced along with the suit by the respondent. The petitioner's claim was on the basis of paragraph 4 of Ext.P3 compromise petition filed before this Court in RFA No.2 of 2002. The appeal which was later dismissed as not pressed. Para 4 of Ext.P3 reads as follows:

“The appellant herein further undertakes that the agreement dt.17.7.95 and sale deed no.4538 of 1954 produced by him before the

Hon'ble Court in the above suit will be handed over to the respondent. He has also no objection in the respondent receiving the same directly from the court below."

2. The application first filed by the petitioner for return of documents was resisted by the 1st respondent herein who contended that the petitioner has no authority by himself to file an application for return of the documents. He also contended that he has not agreed to return the documents to the petitioner. According to him he being the person who produced the documents, he alone is entitled for return of the documents. The above contentions were upheld by the learned sub judge who referred to Rule 132 of the Civil Rules of Practice and took the view that in terms of that rule documents which had not been marked in evidence are to be returned only to the person who produced the document in court.

3. In this Court, the plaintiff alone is made as the respondent and he has filed a detailed counter affidavit. Significantly, the execution of Ext.P3 compromise petition is not disputed in the counter affidavit. What is contended is that the agreement in Ext.P3 will not make the petitioner eligible to get the sale deed handed over to him by the trial court, if he is not otherwise eligible for the same. The contention which is prominently raised is that the petitioner is only one of the legal

representatives of Sri.Mathew and therefore is not entitled to get back the document by himself. It is also contended on the strength of Ext.R1 judgment that the petitioner is at logger heads with the other legal heirs of Sri.E.O Mathai(his co-defendant in the suit).

4. I have heard the submissions of Sri.B.Krishna Mani, learned counsel for the petitioner in detail. I have gone through the counter affidavit filed by the respondent. The learned Subordinate Judge is certainly right in her view that as far as the return of documents not tendered in evidence is concerned, Rule 132 Civil Court mandates that the documents are to be returned to the person who produced the same and that not even an application is necessary in that regard. But the learned Sub Judge should not have ignored the fact that all the issues in the suit have been settled between the parties and the respondent had received Rs.10 lakhs from the defendants in full and final settlements of all his claims over the suit property. Even in this Court Ext.P3 compromise which contains an undertaking by the respondent that the documents will be returned to the petitioner is not disputed. It is obvious that the amount was paid by the petitioner or else there would not have been an undertaking in that line in the compromise petition. What the respondent contends is that just because he has agreed in the compromise petition that the documents will be returned to the

petitioner, if the petitioner is not otherwise entitled for return of the documents, such return will not be justified. The contention in my opinion is too technical for receiving acceptance. At the same time the interest of the co-defendants who are co-sharers of the property in question cannot be lost sight of. Under these circumstances, I set aside the impugned orders and direct the petitioner to file a fresh petition which has the junction of all the co-defendants in the suit seeking return of documents. If such a fresh petition having junction of the defendants in the suit is received by the learned judge, he will allow that application and return all the documents to the petitioner notwithstanding the mandates of Rule 132 of the civil rules of practice. Orders will be passed on the application within three weeks of receiving the same.

The Writ Petition is disposed of as above. No costs.

PIUS C. KURIAKOSE, JUDGE

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